HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.488 of 2007

Between:

B. Narender Rao

... Appellant

And

The Vice Chairman & Managing Director,
APSRTC, Bus Bhavan, RTC 'X' Road,
Musheerabad, Hyderabad and another

... Respondents

::JUDGMENT::

Counsel for the appellant : Shri P. Parameswara Rao for
Shri S.C. Rangappa

June 14, 2007

Per G.S. Singhvi, CJ

Having failed to persuade the learned Single Judge to interfere with his repatriation from the Head Office of the Andhra Pradesh State Road Transport Corporation to the parent cadre in Hyderabad Zone, the appellant Shri B. Nagender Rao has preferred this appeal under Clause 15 of the Letters Patent.

We have heard Shri Parameswara Rao, learned counsel for the appellant and scrutinised the records.

The appellant joined service as Attender in Andhra Pradesh State Road Transport Corporation in 1971. Subsequently, he was promoted as Routine Clerk. While he was working in Hyderabad

Zone, the appellant was taken on deputation to the Head Office in 1999. He continued on deputation for a period of seven years. On receipt of complaint, the competent authority repatriated him to his parent cadre. The appellant represented for his retention in the Head Office, but his request was rejected by the Vice-Chairman and Managing Director of the Corporation. This was conveyed to him by the Chief Personnel Manager vide his letter dated 06.02.2007.

The appellant challenged his repatriation mainly on the ground that the action taken by the competent authority is in violation of the policy contained in circular No.PD-11/2000 dated 03.02.2000, which postulates that an employee should not be transferred only on the basis of anonymous and pseudonymous petitions and complaints. The learned Single Judge declined to interfere with the appellant's transfer and dismissed the writ petition by recording the following observations:

> "The petitioner, who is working in the Hyderabad Zone, admittedly, is on deputation to the Head Office. A reading of the impugned order would disclose that the petitioner has been repatriated to his parent department on the ground that a complaint was received against him. The petitioner, who is on deputation to the Head Office, neither can seek his retention at the Head Office nor can this Court give a direction to the respondents to retain him in the Head Office, more so when the Head Office had dispensed his deputation on a complaint received against him.
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> The petitioner contends that in pursuance of the impugned order, the respondents are seeking to transfer him to a place away from Hyderabad. Now that the petitioner has been repatriated, it is for the authorities in the Hyderabad Zone, to which Zone the petitioner belongs, to accommodate him in the available vacancies. Transfer is an incidence of service, and is made keeping in view the administrative needs and exigencies. Now that the petitioner has been repatriated to the Hyderabad Zone, it is for the authorities in the Hyderabad Zone to accommodate him the existing

vacancies, but certainly no direction can be given by this Court directing the respondents to retain him at Hyderabad in the Hyderabad Zone."

Learned counsel for the appellant put forward the usual argument which is advanced before the courts for interference with the employer's prerogative to transfer an employee from one place to the other by stating that his client is going to retire after one year and six months and that he is suffering from ailment. Another argument of the learned counsel is that his client's repatriation is contrary to the policy adopted by the Corporation not to take action on the anonymous and pseudonymous complaints.

In our opinion, there is no merit in the submissions of the learned counsel and the appeal is liable to be dismissed summarily. Transfer is an incidence of service and not a condition of service – **B. Varadha Rao v. State of Karnataka**[1]. The Court's power of judicial review cannot be exercised for nullifying the discretion exercised by the employer in such matters except when it is established that the order impugned in the writ petition is contrary to some provision of law or is vitiated due to patent arbitrariness or mala fides – **Public Services Tribunal Bar Association v. State of U.P.**[2], **National Hydroelectric Power Corporation Limited v. Shri Bhagwan**[3] and **Union of India v. S.L. Abbas**[4].

The appellant has neither pleaded nor the learned counsel has been able to show that repatriation of his client is contrary to any statutory provision or is tainted by mala fides. The policy framed by the government for regulating transfers of the employees is meant for internal guidance of the officers and violation thereof cannot be made a ground for invalidation of the discretion exercised by the employer to transfer the employee from one place to the other – **Shilpi Bose v. State of Bihar**[5].

With the above observations, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP Nos. 933 and 934 of 2007 filed by the appellant for interim relief are also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

June 14, 2007

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[1] AIR 1986 SC 1955

[2] (2003) 4 SCC 104

[3] (2001) 8 SCC 574

[4] (1993) 4 SCC 357

[5] AIR 1991 SC 532